BAN SENG v. YAP PEK SOO

[A.C.J. (Gill J.) May 19, 1967]

[K.L. — Civil Appeal No. 3 of 1967]

Landlord and Tenant — Premises built on State land with permission of holder of temporary occupation licence — Premises let out on monthly tenancy — Cancellation of licence — Whether tenant estopped from denying title of landlord — Evidence Ordinance, 1950, s. 116.

Where a tenant has been paying rent for a number of years, he is estopped under section 116 of the Evidence Ordinance from denying the title of his landlord, and when a tenant is estopped from denying a title, no title need be shown at all. Thus, whether the landlord brings ejectment, or an action for rent or for use and occupation against his tenant, the defendant can neither set up the superior title of a third person, nor show that the landlord has no title.

This was an appeal from the decision of the magistrate's court whereby judgment was entered in favour of the respondent/plaintiff on his claim against the appellant/defendant for arrears of rent in respect of half portion of premises known as No. 19A Jalan Kasipillai. The plaintiff put up the premises in question on State land with the permission of the then holder of the temporary occupation licence in respect of the land. In 1960 he allowed the defendant to go into occupation as a monthly tenant. The defendant paid rent regularly for six years, but stopped paying rent after he received a summons for illegal occupation of State land. His defence was that he was not liable to pay rent as the house was illegally erected on State land.

Held: the fact that the plaintiff/respondent had no temporary occupation licence at the beginning of the tenancy or at any time subsequently was no bar to the action and the learned magistrate was quite right in entering judgment in his favour.

Cases referred to:—

(1) *Hee Cheng* v. *Krishnan* [1955] M.L.J. 103.

(2) *Govindaraju* v. *Krishnan* [1962] M.L.J. 334.

(3) *Senik* v. *Hassan & Anor.* [1963] M.L.J. 368.

CIVIL APPEAL.

Dato' Athi Nahappan for the appellant.

T. Selvarasan for the respondent.

Gill J.: This is an appeal from a decision of the magistrate's court, Kuala Lumpur in Civil Action No. 2484 of 1965 given on 27th December, 1966, whereby judgment was entered in favour of the respondent/plaintiff on his claim against the appellant/defendant for $585 being arrears of rent for nine months from 1st April, 1965 to 1st December, 1965 at the rate of $65 a month in respect of half portion of the premises known as No. 19A, Jalan Kasipillai, Kuala Lumpur.

The plaintiff's case in support of his claim was that he was the owner of a half portion of the premises in question, his brother named Yap Kim Kee being the owner of the other half, that he let the premises to the defendant on a monthly rent of $65 in 1960, and that the defendant paid him rent until March 1965 but thereafter refused to pay. The defendant's story was that he did not know who the owner of the premises was, although he admitted that he was let into possession thereof by the plaintiff to whom he had paid rent up to March 1965, after which he stopped paying because he received a summons for illegal occupation of State land. He went on to say that he recognised the plaintiff as his landlord until he received the summons, and that he would have continued to pay rent to the plaintiff if he had not received the summons. Thus his defence was that he was not liable to pay rent as the house was illegally erected on State land.

The plaintiff stated in evidence that his brother had obtained a temporary occupation licence in respect of the land and that such licence was issued to them jointly. He denied that the licence had been cancelled. When shown a document cancelling the temporary occupation licence (D.4), he said he was not aware of it. However, he agreed that a summons was issued to the defendant for unlawful occupation of State land and that the defendant stopped paying rent after receipt of the summons.

On the evidence before her the learned magistrate came to the conclusion that, as the defendant had been paying rent to the plaintiff for six years and as the summons against him for illegal occupation was withdrawn, the relationship between the parties was one of landlord and tenant, and therefore gave judgment for the plaintiff.

One of the grounds of appeal is that the learned magistrate was wrong in holding that the plaintiff held a valid temporary occupation licence for the material period. I do not agree that the learned magistrate made any such finding. What she has said in her grounds of judgment is that the plaintiff produced documents (P.6 and P.7) which he believed to be temporary occupation licences. It is clear that neither of these documents is in fact such a licence. The two documents relate to permission by the Municipality to retain the building. From the document of cancellation of the temporary occupation licence (D.4) it was clear that the licence was originally issued to Yap Kim Kee and that this licence was cancelled on 17th June, 1963.

The main ground of appeal is that, as the respondent had no valid temporary occupation licence in his name, he had no right to maintain an action for the recovery of rent. It was argued in this connection that the transfer by Yap Kim Kee of his temporary occupation licence to the plaintiff was void and that such void transfer could not be validated by recourse to the doctrine of estoppel. The question, however, is: was there a transfer of the temporary occupation licence? All that the plaintiff said was that he was the owner of half the premises. The premises were in existence in 1960 when the defendant became tenant. Obviously Yap Kim Kee either allowed the plaintiff to build his half of the premises on State land in respect of which

he held a temporary occupation licence or the cost of building the premises was shared by them. There was no evidence that there was any purported transfer of the temporary occupation licence. The utmost that could be said was that Yap Kim Kee allowed the plaintiff to own half the premises. No question as to the validity of the so-called transfer ever arose so that there was no question of the plaintiff's claim being not maintainable by reason of any transfer.

It is common ground that the land on which the premises stand was at all material times State land. The licence to Yap Kim Kee was issued under rule 40 of the Land Rules, 1930. Rule 41 of the same Rules says that no licence for the temporary occupation of State land shall be transferable. This means that on a contract for the sale and purchase of a house built upon a piece of land in respect of which a temporary occupation licence has been issued, the purchaser cannot claim specific performance or sue for damages for a breach of the contract. It was so held by Thomson J. (as he then was) in the case of *Hee Cheng* v. *Krishnan.*[1]

It is to be observed, however, that rule 41 of the Land Rules prohibits the transfer of a temporary occupation licence. It does not prohibit any dealings which do not amount to a transfer. Thus, if the holder of a temporary occupation licence builds a house on State land and lets it out on rent, such letting does not amount to a transfer of the licence (*per* Ismail Khan J. in *Govindaraju* v. *Krishnan* [2]). In such a case there would clearly be the relationship of landlord and tenant as between the holder of the licence and the person to whom the house is rented. If the temporary occupation licence is subsequently cancelled, this relationship does not cease to exist because the tenant cannot then plead the Ruler's superior title unless he can show a better right to possession in himself which he can do only if he has had a temporary occupation licence issued to him (see *Senik* v. *Hassan & Anor.*[3]). Similarly, if a person builds a house on State land without obtaining a temporary occupation licence and lets it out, his tenant is estopped from denying his title unless he (his tenant) can set up a better title in himself.

Taking the present case at its worst, the plaintiff put up the premises in question on State land obviously with the permission of the then holder of the temporary occupation licence in respect of the land. He allowed the defendant to go into occupation as a monthly tenant. The defendant paid rent regularly for six years. He has expressly admitted that he was the plaintiff's tenant. The only reason why he stopped paying rent was that a summons had been issued against him for unlawful occupation of State land, but that summons was withdrawn. Where a tenant has been paying rent for so many years, he is estopped under section 116 of the Evidence Ordinance, 1950 from denying the title of his landlord, and when a tenant is estopped from denying a title, no title need be shown at all. The most ordinary instance of estoppel is the well-established rule that a tenant, during his possession of premises, shall not deny that the landlord, under whom he had entered and to whom he has paid rent, had title at the time of his admission. Thus, whether the landlord brings ejectment, or an action for rent or for use and occupation against his tenant, the defendant can neither set up the superior title of a third person, nor show that the landlord has no title. The fact that the plaintiff had no temporary occupation licence at the beginnig of the tenancy or at any time subsequently, therefore, was no bar to this action. The learned magistrate was therefore quite right in entering judgment in his favour. The appeal is dismissed with costs.

Appeal dismissed.

Solicitors: *Athi Nahappan & Co.; T. Selvarasan.*

YEE BOON HENG v. TAN CHWEE

[O.C.J. (Raja Azlan Shah J.) May 22, 1967]

[Raub — Civil Suit No. 42 of 1965]

Negligence — Failure to take reasonable precaution — Contributory negligence.

Damages — Hip bone — Dislocation — Pelvic bone — Fracture.

Damages — Running-down action — Interest on damages — Civil Law Ordinance, 1956, s. 11.

In this running-down case the court found that the defendant was negligent in two respects: (1) failing to keep a proper look-out in attempting to negotiate the bend; (2) being suddenly deprived of proper control of his vehicle by some defect suddenly manifesting itself in the vehicle, resulting in the collision. The plaintiff was found to have contributed to his own injury to the extent of 25%.

The plaintiff sustained a dislocation of the hip joint and this dislocation was complicated by a fracture of the pelvic bone which forms part of the hip joint. An open reduction was undertaken, that is, the wound was opened by cutting through the muscles and setting the bone. The fractured fragments had to be screwed to the pelvic bone in order to hold the dislocated bone in position. The plaintiff was hospitalised for 2 months and 12 days. The Orthopaedic Surgeon examined him again on the morning of the trial and stated that his post-operative recovery was normal and satisfactory and that he had been fortunate to recover the use of his hip. He estimated the extent of disablement to be about 20 per cent. As to the period of time during which a person with such injuries would be unable to work, he stated that this depended on response to treatment of the individual concerned, but 4 to 5 months could be taken as the average period. This would be followed by about 2 months of light work. He further stated that osteo-arthritis could be expected to develop at the site of the injuries in about 4 or 5 years' time and could affect his working capacity. It was in evidence that the plaintiff was earning an average of $300 per month at